

AN ACT concerning public health.

WHEREAS, The majority of children who are infected with human immunodeficiency virus (HIV) acquire the virus from their mothers during pregnancy; and

WHEREAS, More than one million Americans are infected with HIV, and 40,000 new cases of HIV occur each year; and

WHEREAS, More than one-quarter of persons with HIV do not know they are infected and contribute to up to 70% of new cases of HIV each year; and

WHEREAS, Pregnant women, particularly women of color, are at high risk for acquiring HIV, but often do not know they carry the risk of transmitting the virus to their newborns; and

WHEREAS, More than 99% of mother-to-newborn transmissions of HIV can be prevented if a pregnant woman is tested for HIV and treated with medications before the birth of her child; and

WHEREAS, National recommendations for preventing mother-to-newborn HIV infection from authorities, including the Institute of Medicine, the Centers for Disease Control and Prevention, the American College of Obstetricians and Gynecologists, the American Academy of Pediatrics, the Presidential Advisory Council on HIV/AIDS, and the National

Congress of Black Women, indicate that the most effective way to prevent mother-to-newborn HIV transmission is through routine prenatal testing of all pregnant women with the right to refuse; and

WHEREAS, Nearly 300 babies have been born with HIV in Illinois since 1994 since it was demonstrated that prenatal HIV testing and treatment can prevent mother-to-newborn HIV infection; and

WHEREAS, The earlier in a pregnancy a woman is identified as having HIV, the greater the opportunity to provide her with more effective care for herself and prevent transmission of HIV to her newborn; and

WHEREAS, The public health will be served by expanding the availability of informed, voluntary, and confidential HIV testing and making HIV testing a routine part of general medical care, as recommended by the United States Centers for Disease Control and Prevention; therefore

**Be it enacted by the People of the State of Illinois,  
represented in the General Assembly:**

Section 5. The Perinatal HIV Prevention Act is amended by changing Sections 10 and 15 as follows:

(410 ILCS 335/10)

Sec. 10. HIV counseling and offer of HIV testing required.

(a) Every health care professional who provides health care services to a pregnant woman shall, unless she has already been tested during the current pregnancy, provide the woman with HIV counseling, as described in subpart (d) of this Section, and shall test her for HIV unless she refuses. A refusal may be verbal or in writing. ~~recommend HIV testing, unless she has already received an HIV test during pregnancy. HIV testing shall be provided with the woman's consent.~~ A health care professional shall provide the counseling and recommend the testing as early in the woman's pregnancy as possible. For women at continued risk of exposure to HIV infection in the judgment of the health care professional, a repeat test should be recommended late in pregnancy or at the time of labor and delivery. ~~The health care professional shall inform the pregnant woman that, should she refuse HIV testing during pregnancy, her newborn infant will be tested for HIV.~~ The counseling and testing or refusal of testing ~~recommendation of testing~~ shall be documented in the woman's medical record.

(b) Every health care professional or facility that cares for a pregnant woman during labor or delivery shall, unless she has already been tested during the current pregnancy, provide the woman with HIV counseling, as described in subpart (d) of this Section, and ~~recommend~~ HIV testing unless she refuses. A

~~refusal may be verbal or in writing. HIV testing shall be provided with the woman's consent. No counseling or offer of testing is required if already provided during the woman's pregnancy.~~ The counseling and testing or refusal of testing ~~and offer of testing~~ shall be documented in the woman's medical record. The health care facility shall adopt a policy that provides that as soon as possible within medical standards after the infant's birth, the mother's HIV test result, if available, shall be noted in the newborn infant's medical record. It shall also be noted in the newborn infant's medical record if the mother's HIV test result is not available because she has not been tested or has declined testing. Any testing or test results shall be documented in accordance with the AIDS Confidentiality Act.

(c) Every health care professional or facility caring for a newborn infant shall, upon delivery or as soon as possible within medical standards after the infant's birth, provide counseling as described in subsection (d) of this Section to the parent or guardian of the infant and perform rapid HIV testing on the infant, when the HIV status of the infant's mother is unknown.

(d) The counseling required under this Section must be provided in accordance with the AIDS Confidentiality Act and must include the following:

- (1) For the health of the pregnant woman, the voluntary nature of the testing, ~~and~~ the benefits of HIV testing,

including the prevention of transmission, and the requirement that HIV testing be performed unless she refuses and the methods by which she can refuse.

(2) The benefit of HIV testing for herself and the newborn infant, including interventions to prevent HIV transmission.

(3) The side effects of interventions to prevent HIV transmission.

(4) The statutory confidentiality provisions that relate to HIV and acquired immune deficiency syndrome ("AIDS") testing.

(5) The requirement for mandatory testing of the newborn if the mother's HIV status is unknown at the time of delivery.

(6) An explanation of the test, including its purpose, limitations, and the meaning of its results.

(7) An explanation of the procedures to be followed.

(8) The availability of additional or confirmatory testing, if appropriate. Counseling may be provided in writing, verbally, or by video, electronic, or other means. The woman must be offered an opportunity to ask questions about testing and to decline testing for herself.

(e) All counseling and testing must be performed in accordance with the standards set forth in the AIDS Confidentiality Act, including the ~~written~~ informed consent provisions of Sections 4, 7, and 8 of that Act, with the

exception of the requirement of consent for testing of newborn infants.

Consent for testing of a newborn infant shall be presumed when a health care professional or health care facility seeks to perform a test on a newborn infant whose mother's HIV status is not known, provided that the counseling required under subsection (d) of this Section and the AIDS Confidentiality Act has taken place.

(f) The Illinois Department of Public Health shall adopt necessary rules to implement this Act by July 1, 2008.

(Source: P.A. 93-566, eff. 8-20-03; 94-910, eff. 6-23-06.)

(410 ILCS 335/15)

Sec. 15. Reporting.

(a) A health care facility shall adopt a policy that provides that a report of a preliminarily HIV-positive woman and a report of a preliminarily HIV-exposed newborn infant identified by a rapid HIV test conducted during labor and delivery or after delivery shall be made to the Department's Perinatal HIV Hotline within 24 hours after birth. Section 15 of the AIDS Confidentiality Act applies to reporting under this Act, except that the immunities set forth in that Section do not apply in cases of willful or wanton misconduct.

(b) The Department shall adopt rules specifying the information required in reporting the preliminarily HIV-positive woman and preliminarily HIV-exposed newborn

infant and the method of reporting. In adopting the rules, the Department shall consider the need for information, protections for the privacy and confidentiality of the infant and parents, the need to provide access to care and follow-up services to the infant, and procedures for destruction of records maintained by the Department if, through subsequent HIV testing, the woman or newborn infant is found to be HIV-negative.

(c) The confidentiality provisions of the AIDS Confidentiality Act shall apply to the reports of cases of perinatal HIV made pursuant to this Section.

(d) Health care facilities shall monthly report aggregate statistics to the Department that include the number of infected women who presented with known HIV status, the number of pregnant women rapidly tested for HIV in labor and delivery, the number of newborn infants rapidly tested for HIV-exposure, the number of preliminarily HIV-positive pregnant women and preliminarily HIV-exposed newborn infants identified, the number of families referred to case management, and other information the Department determines is necessary to measure progress under the provisions of this Act. Health care facilities must report the confirmatory test result when it becomes available for each preliminarily positive rapid HIV test performed on the woman and newborn.

(e) The Department or its authorized representative shall provide case management services to the preliminarily positive

pregnant woman or the parent or guardian of the preliminarily positive newborn infant to ensure access to treatment and care and other services as appropriate if the parent or guardian has consented to the services.

(f) Every health care facility caring for a newborn infant whose mother had been diagnosed HIV positive prior to labor and delivery shall report a case of perinatal HIV exposure in accordance with the HIV/AIDS Registry Act, the Illinois Sexually Transmissible Disease Control Act, and rules to be developed by the Department. If after 18 months from the date that the report was submitted, a newborn infant is determined to not have HIV or AIDS, the Department shall remove the newborn infant's name from all reports, records, and files collected or created under this subsection (f).

(Source: P.A. 94-910, eff. 6-23-06.)